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TO:	FROM:
Examiner Norman M. Wright	James E. Boice, Reg. No. 44,545
ORGANIZATION:	DATE:
US Patent and Trademark Office	March 20, 2006
ART UNIT:	TOTAL NO. OF PAGES INCLUDING COVER:
2134	20
FAX NUMBER:	APPLICATION SERIAL NO:
571.273.8300	09/733,737
ENCLOSED:	ATTORNEY DOCKET NO:
Appeal Brief	RAL920000041US1

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

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MAR 20 2006

IN RE APPLICATION OF:
CYNTHIA ANN ADIANO
SERIAL NO.: 09/733,737
FILED: 08 DECEMBER 2000
FOR: SECURE ELECTRONIC
SOFTWARE DISTRIBUTION

ATTY. DOCKET NO.: RAL920000041US1
§
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§ EXAMINER: NORMAN M. WRIGHT
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§ ART UNIT: 2134
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APPEAL BRIEF UNDER 37 C.F.R. 41.37

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Sir:

This Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 46-52, 58-61, 62, 64-69 and 70-75 in the above-identified application. A Notice of Appeal was filed in this case on February 13, 2006 and received in the United States Patent and Trademark Office on February 13, 2006. Please charge the fee of \$500.00 due under 37 C.F.R. §1.17(c) for filing the brief, as well as any additional required fees, to IBM CORPORATION DEPOSIT ACCOUNT No. 09-0457.

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03/21/2006 EFLORES 00000082 090457 09733737

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RAL920000041US1 -- Appeal Brief

- 1 -

Serial No. 09/733,737

REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 011382, frame 0941.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 46-52 and 58-75 stand finally rejected by the Examiner as noted in the Advisory Action dated January 31, 2006. The rejection of Claims 46-52 under 35 U.S.C. § 112, second paragraph; the rejection of Claims 46-51, 64-69 and 70-75 under 35 U.S.C. § 103(a); the rejection of Claim 52 under 35 U.S.C. § 103(a); the rejection of Claim 58 under 35 U.S.C. § 103(a); the rejection of Claim 59 under 35 U.S.C. § 103(a); the rejection of Claim 60 under 35 U.S.C. § 103(a); the rejection of Claim 61 under 35 U.S.C. § 103(a); and the rejection of Claim 63 under 35 U.S.C. § 103(a) are appealed.

STATUS OF AMENDMENTS

No amendments to the claims have been made subsequent to the Advisory Action from which this Appeal is filed.

SUMMARY OF THE CLAIMED SUBJECT MATTER

As recited by Appellants' independent Claim 46, Appellants' invention provides a method for preventing an e-mail attachment from being forwarded by a receiving computer. The method comprises the following steps:

- (1) appending a software application program as an attachment to an e-mail message;
- (2) transmitting the e-mail message with the appended software application program to a receiving computer; and

(3) permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded (emphasis added).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. The Examiner's rejection of Claims 46-52 as being unpatentable under 35 USC 112, second paragraph is to be reviewed on Appeal.
- B. The Examiner's rejection of Claims 46-51, 64-69 and 70-75 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 –“*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 –“*Leonard*”) is to be reviewed on Appeal.
- C. The Examiner's rejection of Claim 52 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 –“*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 –“*Leonard*”) is to be reviewed on Appeal.
- D. The Examiner's rejection of Claim 58 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 –“*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 –“*Leonard*”) is to be reviewed on Appeal.
- E. The Examiner's rejection of Claim 59 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 –“*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 –“*Leonard*”) is to be reviewed on Appeal.
- F. The Examiner's rejection of Claim 60 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 –“*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 –“*Leonard*”) is to be reviewed on Appeal.

- G. The Examiner's rejection of Claim 61 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – “*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – “*Leonard*”) is to be reviewed on Appeal.
- H. The Examiner's rejection of Claim 63 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – “*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – “*Leonard*”) is to be reviewed on Appeal.

ARGUMENTS

- A. The Examiner's rejection of Claims 46-52 as being unpatentable under 35 USC 112, second paragraph.

The Examiner's rejection of Claims 46-52 is improper since the phrase "permitting the software application to run" is clear and definite.

With regards to exemplary Claim 46, the Examiner has rejected the claim for using the phrase "permitting the software application to run...prevent the e-mail message...from being forwarded." Specifically, the Examiner states that it is unclear "as to who or whom is permitting the software application from being run or forwarded." In other words, the Examiner appears to be taking the position that, because the claim language does not specify whether an e-mail sender or an e-mail receiver is permitting the appended software from running or being forwarded, then the claim is indefinite. It is axiomatic that breadth is not indefiniteness (*MPEP* § 2173.04). As supported by Page 3 of the specification, permitting the software application to run only if the e-mail cannot be forwarded is a function of the e-mail itself. While permission may be invoked by logic in the receiving computer or the sending computer, this is irrelevant to the scope of the claim. Thus, this rejection is not well founded and should be reversed.

- B. The Examiner's rejection of Claims 46-51, 64-69 and 70-75 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claims 46-51, 64-69 and 70-75 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With respect to exemplary Claim 46, the cited prior art does not teach or suggest "permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded." (For support

of this feature, please see, *inter alia*, the third full paragraph of page 7 of the present specification.)

The Examiner cites *Olkin* for the teaching that an e-mail can contain an attachment that is an application. The Examiner cites *Leonard* for teaching that e-mail can be marked to prevent being forwarded. Thus, an e-mail message may be deleted from storage upon an occurrence of an event such as the message being read by the recipient, or a failure of the recipient to check in with a security agency. (*Leonard*, col. 18, lines 34-38.) *Leonard* fails to ever describe the specifically claimed step of permitting a software application program (which is appended to an e-mail as an attachment) "to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded." The Examiner states for the first time in the final office action that such a step would be a useful means for "guarding the data against unauthorized use and/or distribution." While Appellants agree, there is no teaching or suggestion by the combination of cited references of making execution of the appended software contingent upon the carrier e-mail being unable to be forwarded by the recipient.

In the Advisory Action, the Examiner states that the "do not forward options being mandatory is not an element of the claims." Appellants are unable to understand how the limitation "only" as found in the feature "permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded" can be interpreted as anything but mandatory.

For reasons so stated, Appellants plea that this rejection is not well founded and should be reversed.

C. The Examiner's rejection of Claim 52 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claim 52 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

The cited art does not teach or suggest "permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server," as supported in the present specification at, *inter alia*, the third full paragraph on page 7.

The Examiner rejects Claim 52 "under the same rationale" as the rejection of Claim 47 (see Paragraph 15 of the August 26, 2005 Final Office Action). Claim 47 is rejected under 35 U.S.C. § 102(a), which cites the teaching of *Olkin*. Specifically, *Olkin* is cited for teaching that e-mail can be sent from a server that shares an encryption key with the receiver, thus ensuring that the e-mail is valid (authenticated). The problem with this line of reasoning is that a key may be shared with another server, and thus there is no requirement that the e-mail was received from a "pre-specified e-mail server." That is, *Olkin* teaches the requirement that the sender and receiver both have access to a key (or more likely, a public/private key pair), but the receiver really doesn't care which physical server has access to the key. Rather, the receiver *Olkin* only cares if the sender shares a same key (or key pair) with the receiver. Thus, this rejection is not well founded and should be reversed.

D. The Examiner's rejection of Claim 58 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claim 58 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With regards to Claim 58, the cited art does not teach or suggest "in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program." The Examiner has taken "official notice of both the motive and modification necessary to have an applet

discontinue installation if an application is not saved first/unsaved." Use of this type of rejection is in contravention to Section 2144.03 of the MPEP, since "in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program" is not supported by evidentiary support in the record. Appellants have traversed this rejection in their response to the August 26, 2005 final Office Action, and requested that the Examiner provide concrete evidence in the record or through a personal affidavit that "in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program" is "well known" in the prior art. Neither has been provided to date. Thus, this rejection is not well founded and should be reversed.

E. The Examiner's rejection of Claim 59 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claim 59 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With regards to Claim 59, the cited art does not teach or suggest "permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server." *Olkin* uses a security server 24 and an e-mail server 22 (Figure 1), but does not teach or suggest a pre-specified e-mail server as being prerequisite to running an attached application. Thus, this rejection is not well founded and should be reversed.

F. The Examiner's rejection of Claim 60 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claim 60 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With regards to Claim 60, the cited art does not teach or suggest "permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded." *Leonard* teaches that an e-mail can have a "Do Not Forward" option (Figure 5) and an e-mail self-destruction option (col. 6, lines 20-35). However, neither *Leonard* nor *Olkin* teach or suggest making a "Do Not Forward" option mandatory to be able to open an application attachment. The Examiner addresses this feature on Page 4 of the current office action, stating, in effect, that such a feature is desirable. Appellants agree. However, the cited art does not teach or suggest this feature. Rather, the cited art is directed to protecting e-mails by preventing their forwarding (*Leonard*, Figure 5), protecting streaming content by only webcasting it live, protecting streaming applications through the use of self-destruct embedded instructions in streaming executable files, and protecting non-streaming files with encryption keys (*Leonard*, col. 3, lines 49-65). Thus, this rejection is not well founded and should be reversed.

G. The Examiner's rejection of Claim 61 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – "*Olkin*") in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – "*Leonard*").

The Examiner's rejection of Claim 61 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With regards to Claim 61, the cited art does not teach or suggest "enabling the appended software application program only if the received and decrypted serial number matches the stored serial number." *Olkin* teaches a means for encrypting e-mail (col. 6, line 12 ~ col. 7, line 7), but does not teach or suggest "enabling the appended software application program only if the received and decrypted serial number matches the stored serial number." Again, the Examiner takes "official notice of both the motive and modification necessary for having a local processor store its identifying information/serial number/machine identify in an encrypted registry as part of a validation/installation process," and cites Figure 5; col. 8, lines 40-45 and 60-67; and col.

10, lines 25 et seq. of *Olkin* as support for this notice. However, *Olkin*, and in particular the cited passages, do not teach or suggest “enabling the appended software application program only if the received and decrypted serial number matches the stored serial number.” Rather, *Olkin* merely teaches relational databases for e-mail users (Figure 5 and col. 10, lines 25 et seq.), and the use of encryption for e-mail (col. 8, lines 40-45). The only mention of an application in *Olkin* is “software module 26 for receiving and decrypting the secure e-mail” (col. 6, lines 57-58). That is, there is no teaching or suggestion of “enabling the appended software application program only if the received and decrypted serial number matches the stored serial number,” since the only application program mentioned is the e-mail program itself. As the record does not support the “common knowledge” alleged by the Examiner, Appellants have traversed this rejection and requested that the Examiner provide concrete evidence in the record or through a personal affidavit that “enabling the appended software application program only if the received and decrypted serial number matches the stored serial number” is “well known” in the prior art. Neither has been provided to date. Thus, this rejection is not well founded and should be reversed.

H. The Examiner’s rejection of Claim 63 as being unpatentable under 35 USC 103(a) over *Olkin, et al.* (U.S. Patent No. 6,584,564 – “*Olkin*”) in view of *Leonard, et al.* (U.S. Patent No. 6,721,784 – “*Leonard*”).

The Examiner’s rejection of Claim 63 is improper since the combined art does not teach or suggest all of the limitations found in the subject claim.

With regards to Claim 63, the cited art does not teach or suggest “the appended software application program can be installed on the receiving computer only once.” *Olkin* teaches that an e-mail can be read a limited number of times (col. 9, lines 32-36), but makes no suggestion about limiting how often the appended software can be installed on the computer. Thus, this rejection is not well founded and should be reversed.

CONCLUSION

Appellants have pointed out with specificity the manifest error in the Examiner's rejections, and the claim language which renders the invention patentable over the various combinations of references. Appellants, therefore, respectfully request that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



James E. Boice
Reg. No. 44,545
DILLON & YUDELL LLP
8911 N. Capital of Texas Highway
Suite 2110
Austin, Texas 78759
512-343-6116

ATTORNEY FOR APPELLANTS

CLAIMS APPENDIX

1-45. (cancelled)

46. A method comprising:

appending a software application program as an attachment to an e-mail message;

transmitting the e-mail message with the appended software application program to a receiving computer; and

permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded.

47. The method of claim 46, further comprising:

permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server.

48. The method of claim 46, further comprising:

imbedding instructions into the e-mail message that, in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program.

49. The method of claim 46, further comprising:

imbedding instructions into the e-mail message that permits a receiving computer to encrypt a serial number of a component of the receiving computer;

receiving the encrypted serial number of the component of the receiving computer;

decrypting the received encrypted serial number of the component of the receiving computer;

comparing the decrypted received serial number with a stored serial number in a system registry of authorized systems; and

enabling an installation of the appended software application program only if the received and decrypted serial number matches the stored serial number.

50. The method of claim 46, further comprising:

enabling installation of the appended application program only if an authorized user identifier (ID) is input into the receiving computer.

51. The method of claim 46, wherein the appended software application program can be installed on the receiving computer only once.

52. A method comprising:

appending a software application program to an e-mail message as an attachment to the e-mail message;

transmitting the e-mail message with the appended software application program to a receiving computer; and

permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server.

53-57. (cancelled)

58. A method comprising:

appending a software application program to an e-mail message as an attachment to the e-mail message;

transmitting the e-mail message with the appended software application program to a receiving computer; and

imbedding instructions into the e-mail message that, in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program.

59. The method of claim 58, further comprising:

permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server.

60. The method of claim 59, further comprising:

permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded.

61. The method of claim 60, further comprising:

imbedding instructions into the e-mail message that permits a receiving computer to encrypt a serial number of a component of the receiving computer;

receiving the encrypted serial number of the component of the receiving computer;

decrypting the received encrypted serial number of the component of the receiving computer;

comparing the decrypted received serial number with a stored serial number in a system registry of authorized systems; and

enabling the appended software application program only if the received and decrypted serial number matches the stored serial number.

62. The method of claim 61, further comprising:

permitting installation of the appended application program only if an authorized user identifier (ID) is input into the receiving computer.

63. The method of claim 62, wherein the appended software application program can be installed on the receiving computer only once.

64. A system comprising:

means for appending a software application program to an e-mail message as an attachment to the e-mail message;

means for transmitting the e-mail message with the appended software application program to a receiving computer; and

means for permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded.

65. The system of claim 64, further comprising:

means for permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server.

66. The system of claim 65, further comprising:

means for imbedding instructions into the e-mail message that, in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program.

67. The system of claim 66, further comprising:

means for imbedding instructions into the e-mail message that permits a receiving computer to encrypt a serial number of a component of the receiving computer;

means for receiving the encrypted serial number of the component of the receiving computer;

means for decrypting the received encrypted serial number of the component of the receiving computer;

means for comparing the decrypted received serial number with a stored serial number in a system registry of authorized systems; and

means for enabling the appended software application program only if the received and decrypted serial number matches the stored serial number.

68. The system of claim 67, further comprising:

means for permitting installation of the appended application program only if an authorized user identifier (ID) is input into the receiving computer.

69. The system of claim 68, wherein the appended software application program can be installed on the receiving computer only once.

70. A machine-readable medium having a plurality of instructions processable by a machine embodied therein, wherein said plurality of instructions, when processed cause said machine to perform a method comprising the steps of:

appending a software application program to an e-mail message as an attachment to the e-mail message;

transmitting the e-mail message with the appended software application program to a receiving computer; and

permitting the software application program to run only if a determination is made that a disabling instruction has been incorporated into the e-mail message that prevents the e-mail message with the appended software application program from being forwarded.

71. The machine-readable medium of claim 70, wherein the method further comprises:

permitting the software application program to run only if a determination is made that the e-mail message with the appended software application program was received by the receiving computer from a pre-specified e-mail server.

72. The machine-readable medium of claim 71, wherein the method further comprises:

imbedding instructions into the e-mail message that, in response to determining that the e-mail was not saved by the receiving computer, discontinues an installation on the receiving computer of the appended software application program.

73. The machine-readable medium of claim 72, wherein the method further comprises:

imbedding instructions into the e-mail message that permits a receiving computer to encrypt a serial number of a component of the receiving computer;

receiving the encrypted serial number of the component of the receiving computer;

decrypting the received encrypted serial number of the component of the receiving computer;

comparing the decrypted received serial number with a stored serial number in a system registry of authorized systems; and

enabling the appended software application program only if the received and decrypted serial number matches the stored serial number.

74. The machine-readable medium of claim 73, wherein the method further comprises:
permitting installation of the appended application program only if an authorized user identifier (ID) is input into the receiving computer.

75. The machine-readable medium of claim 70, wherein the appended software application program can be installed on the receiving computer only once.

EVIDENCE APPENDIX

Other than the Office Action(s) and reply(ies) already of record, no additional evidence has been entered by Appellants or the Examiner in the above-identified application which is relevant to this appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellants, Appellants' legal representative, or assignee.